

DECISION MEMO

Kloser Construction Access - Richmond Ridge Project

**USDA Forest Service
Aspen-Sopris Ranger District, White River National Forest
Pitkin County, Colorado**

**Hercules Lode M.S. #4251;
SW1/4, Sec. 31, T. 10 S., R. 84 W., 6th P.M., Pitkin County, Colorado**

November 2019

DECISION

Based on project scoping and analysis conducted, it is my decision to authorize Mike and Emily Kloser to construct a temporary construction access road through National Forest System (NFS) lands to a proposed cabin on their Hercules Lode Claim, as described below. This authorization is valid only after the Klosers provide evidence that Pitkin County permitting has been completed approving the proposed cabin. In conjunction with this project, my decision also includes the requisite project design criteria (PDC) to minimize resource impacts (refer to Table 1: Project Design Criteria).

The project area has been reviewed by United States Department of Agriculture (USDA) Forest Service (Forest Service) specialists for impacts to relevant resources, including heritage/cultural resources, soils, recreation, scenery, water resources, wetlands, wildlife, and botany. No significant issues were identified that could not be avoided or mitigated, and all practical means have been employed to avoid and/or minimize environmental impact. The analysis for this project is documented in a project file and maintained by the Aspen-Sopris Ranger District. Potential disturbance on NFS lands will be approximately 0.07 acres.

This project is consistent with management direction in the 2002 White River National Forest (WRNF) Forest Plan and standards and guidelines for Management Area 7.1 (Intermix). The project is detailed below and depicted on the attached figure.

The following actions described below are included in the Hercules Lode Claim Access Road decision.

Hercules Lode Claim Access Road

The temporary construction access road would begin at the existing Richmond Ridge Road and pass through NFS lands for approximately 228 feet until reaching the private land boundary of the Hercules Lode Claim. The travel surface of the majority of the temporary construction access road would be approximately 9 to 10 feet wide and the width of access road corridor would be approximately 14 feet, resulting in approximately 0.07 acres of disturbance on NFS lands. Where the temporary access road

crosses the property boundary between NFS lands and the Hercules Lode Claim, the width of the road would be reduced to 7 feet 4 inches and the grade retained with 3/16-inch sheet steel.

Construction of the temporary construction access road would be initiated following winter snowmelt and when conditions allow, estimated to be on or around June 15. Following construction, the entire temporary construction access road disturbance area would be reclaimed and revegetated to a leave only a minimally graded template for future limited motor vehicle use. Staging areas would be constructed on private lands; no staging areas would occur on NFS lands.

The term of use for the temporary construction access road is two summer seasons, which is the anticipated timeframe to construct the cabin on the Hercules Lode Claim. In the first summer season, temporary sedimentation control structures would be installed at a height below the snow surface along the temporary access road in order to eliminate potential obstructions to commercial and public ski access during the following winter. Pitkin County Rural and Remote zoning does not require driveway access, therefore; longer-term motorized access would be authorized on a limited case-by-case basis.

BACKGROUND

Mike and Emily Kloser propose to construct a temporary construction access road to their Hercules Lode Claim that would cross NFS lands. The Hercules Lode Claim (United States Mineral Survey #4251) is located in the Richmond Ridge area just south of Aspen Mountain Ski Area in Section 31, Township 10 South, Range 84 West, Pitkin County, Colorado.

The purpose of the temporary construction access road is to provide motorized summer access to facilitate the construction of a cabin on the Hercules Lode Claim. The need for the development of construction access across NFS lands is because access routes to the Hercules Lode Claim using non-federal lands have been shown to be development restricted per terms established during previously executed Transferable Development Rights extended by Pitkin County. Access directly off of County Road 150 Little Annie Road to the Hercules Lode Claim is also constrained due to the presence of steep slopes. The Aspen-Sopris Ranger District has encouraged the Klosers to address this matter through use of private property; at the time of this decision, an equitable agreement with adjacent land owners has not been reached.

CATEGORICAL EXCLUSION

Decisions may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) when they are within one of the categories identified by the USDA in 7 CFR § 1b.3 or the proposed action is within a category listed in 36 CFR § 220.6(d) and (e), and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

I have determined that the project, as proposed and described in detail above, is consistent with the category

36 CFR § 220.6(e)(3) Approval, modification, or continuation of minor special uses of NFS lands that require less than five contiguous acres of land.

The project is a permissible use of the land and total disturbance related to implementation of the project is approximately 0.07 acres. As discussed below, I find no extraordinary circumstances related to this decision that may result in a significant individual or cumulative environmental effect.

Therefore, I have decided to authorize the project, as described above, without further analysis under the National Environmental Policy Act (NEPA). The following resource conditions were considered in determining whether extraordinary circumstances related to the project I am authorizing warranted further analysis and documentation in an EIS or an EA (36 CFR § 220.6(b)(i-vii)).

It is my determination that the aforementioned project will result in minimal impacts to NFS resources as discussed below. Prior to implementation, Forest Service resource specialists will further review the project for field fitting, as necessary.

Federally Listed Threatened or Endangered Species or Designated Critical Habitat

The Endangered Species Act (ESA, 16 U.S.C. §§ 1531–1544) requires that federal actions not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat. Western Bionomics Inc. prepared a *Migratory Bird Assessment and Wildlife, Fisheries, and Botany Biological Evaluation* (BE) for the Kloser Construction Access - Richmond Ridge Project, the results of which are discussed below.¹

The project area does not contain habitat supporting federally listed threatened Canada lynx. While the project area lies within a larger matrix of lynx habitat, the area of proposed disturbance is marked by meadow, which does not provide food or cover resources. Lynx only move across meadow, regardless of elevation; whether alpine or tundra. Further, no vegetation clearing is associated with the proposed temporary construction. In addition, temporary construction activity will occur during the summer, when other human uses are ongoing on Richmond Ridge. These activities will not serve as a barrier to movement or habitat connectivity, nor would long term access or human activity. Potential effects, if measurable and detectable to a lynx, would likely be insignificant and discountable. Therefore, it has been determined that the project will have “no effect” or “may effect, not likely to adversely affect” Canada lynx in the project area.

Forest Service Region 2 Sensitive Species with potential to be present or affected by the project include the western bumblebee. The project would impact 0.07 acres of forbland providing potential habitat for the western bumble bee. Since construction activities would disturb potential forb habitat, the project “may adversely impact individuals, but is not likely to result in a loss of viability in the planning area, nor cause a trend towards federal listing.” In addition, the project site includes habitat suitable for the trianglelobe moonwort, the Colorado tansy-aster, and the Gray’s Peak draba; however; none of these three

¹ Western Bionomics 2019a

species were observed during botany surveys at the project location. Therefore, the project will have no impact either directly, indirectly, or cumulatively on these sensitive species.²

Birds of Conservation Concern with potential to be present or affected by the project include ferruginous hawk, golden eagle, and Cassin's finch. Of the aforementioned bird species, only Cassin's finch was found to have suitable nesting habitat in the project area; however, the project was not found to result in direct or indirect impacts on nesting habitat.³

Floodplains, Wetlands, or Municipal Watersheds

Executive Order 11990 requires the Agency to determine whether the improvement authorized in this decision will occur in floodplains, and if so, to include appropriate restrictions. A Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map 08097C0214C, effective June 4, 1987, identifies the project area as Zone X – Areas determined to be outside the 500-year floodplain. Based on this review, it has been determined that the project is not located within a floodplain; therefore, this decision will not require additional restriction.⁴

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredge and fill material into waters of the United States, including wetlands, thereby minimizing impacts.

Regulations implementing the CWA define wetlands as:

*... areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.*⁵

For an area to be a federally jurisdictional wetland, the 1987 United States Army Corps of Engineers (USACE) Wetland Delineation Manual and Supplement require the area to be dominated by hydrophytic vegetation, exhibit hydric soils, and possess wetland hydrology. If any one of these three indicators is absent, the site is not subject to federal jurisdiction under the CWA. A wetland survey was completed for the project area and the project area is not dominated by hydrophytic vegetation as presented in the 2016 National Wetland Plant List. As hydrophytic vegetation dominance is absent from the project areas, it was not necessary to examine soils or hydrology. Based on the defining characteristics of wetlands presented above, the project area fails to meet the USACE definition of a wetland and is not subject to federal jurisdiction under Section 404 of the CWA.⁶

Congressionally Designated Areas

The project area is not located within any Congressionally Designated Wilderness Areas, Wilderness Study Areas, or National Recreation Areas. The nearest Congressionally Designated Area is the

² Ibid.

³ Western Bionomics 2019a.

⁴ FEMA 1987

⁵ Western Bionomics 2019b

⁶ Ibid.

Collegiate Peaks Wilderness Area, which is located 1.1 miles to the east of the project area. Therefore, no congressionally designated areas will be affected by this decision.

Inventoried Roadless Areas

The project area is not located within a Roadless Area. The nearest Roadless Area designation is the Macfarlane Roadless Area, which is located 0.84 miles to the east of the project area. Therefore, this decision will not affect any inventoried roadless areas.

Research Natural Areas

There are no candidates or designated Research Natural Areas (RNA) in or near the project area; the nearest RNA is the Gothic RNA located on the Gunnison National Forest, approximately 14 miles southwest of the project area. Therefore, this decision will not affect candidate or designated RNAs.

American Indians Religious or Cultural Sites, Archaeological Sites or Historic Properties

Section 106 of the National Historic Preservation Act (U.S.C. 470 *et seq.*) requires federal agencies take into account the effect of a project on any precontact or historic district, site, building, structure, or object that is included in or eligible for, inclusion in the National Register of Historic Places (NRHP). Metcalf Archaeological Consultants, Inc. (Metcalf) conducted a Class III cultural resources survey for the Kloser Construction Access - Richmond Ridge Project.⁷ Five cultural resources were documented, including one historic segment of Richmond Hill Road and four isolated mining prospect pits. The historic road segment is recommended as a non-supporting element of the overall potential eligibility of the resource (the entire Richmond Hill Road); none of the isolated finds are eligible for the NRHP. Therefore, Metcalf recommended a finding of “*no historic properties affected*” for the project. SHPO concurred with this finding in a letter dated August 20, 2019. Tribal consultation was made with a response of “No Adverse Effect” per a letter from the Southern Ute Indian Tribe dated October 2, 2019.

PUBLIC INVOLVEMENT

The project has been listed on the Schedule of Proposed Actions (SOPA) since May 10, 2019, and has been available for the public to review and contact us for additional information. In addition, a scoping notice dated May 14, 2019, was sent in hardcopies to three adjacent property owners and was also published on the WRNF website (<https://www.fs.usda.gov/project/?project=56057>) with the intent of providing information on the proposal.

In reaching my decision, I considered input from Forest Service resource specialists who analyzed the proposal, and two comment letters that were received during the scoping period from the general public. Comments from the public were made both in support and in opposition of the project. Several individual comments are summarized below; additional comments are addressed in the *Kloser Scoping Notice Comments Response* document, located in the project file.

⁷ Metcalf Archaeological Consultants 2018

One comment stated that the project was not eligible to be granted under the Alaska National Interest Land Conservation Act (ANILCA). The Forest Service determined that the matter of reference to ANILCA in the Scoping Notice was a referencing error and that the request for temporary access as per the proposal would be more correctly described as a discretionary decision.

One comment expressed concern over the alignment of the access road as it crosses onto the Hercules Claim, suggesting that the alignment requires a trespass on and physical occupation of an adjacent property. The Forest Service required independent verification of the design for the access improvement on NFS lands and where the access road template would enter the Hercules Lode claim; this review was conducted by Roaring Fork Engineering, Inc. and supported that the project design is feasible and the access will accommodate the construction and service of a structure on the Hercules Lode claim.⁸ If the applicant will be crossing private property as part of the activity, prior to authorization, the applicant would be required to provide proof of legal access.

FINDINGS REQUIRED BY OTHER LAWS

This decision is consistent with the 2002 WRNF Forest Plan as required by the National Forest Management Act. The project was designed in conformance with Forest Plan standards and incorporates appropriate WRNF Forest Plan standards and guidelines for Management Area 7.1.

Project Design Criteria

To minimize resource impacts, my decision incorporates the PDC identified in Table 1:

⁸ Roaring Fork Engineering 2019.

**Table 1:
Project Design Criteria**

General
The Klosers will obtain all required state, county and city permits prior to the start of construction.
The Klosers will prepare an Operations and Maintenance Plan for review and approval by the Forest Service prior to the start of construction. Additional mitigation measures beyond those contained in this table may be identified in this plan.
Cultural Resources
If undocumented historic and/or prehistoric properties are located during ground disturbing activities or planning activities associated with approved construction activities, all construction in the immediate vicinity must cease and they will be treated as specified in 36 CFR § 800.11 concerning Properties Discovered During Implementation of an Undertaking.
Soils and Vegetation
Where the temporary access road crosses the property boundary between NFS lands and the Hercules Lode Claim, the width of the road would be reduced to 7 feet 4 inches and the grade retained with 3/16-inch sheet steel
To stabilize and maintain the access road during and after construction, temporary sedimentation control structures will be installed in the first summer season at a height below the snow surface, eliminating potential obstructions to commercial and public ski access during the following winter. Sedimentation control structures will include silt fence or similar, installed on the downgradient edge of the proposed access road for the entire length of the access road and connecting to the silt fence surrounding the construction envelope on private lands.
To enhance preservation of soil moisture and facilitate seed germination where the road is reclaimed, mulch will be used.
To minimize the introduction of noxious weeds, the project administrator shall inspect all off-road equipment prior to entering NFS lands to ensure that they are free of soil, seeds, vegetative matter, or other debris that could contain or hold noxious weed seeds. "Off-road equipment" includes all construction machinery or off-highway vehicles, except for trucks, service vehicles, water trucks, pickup trucks, cars, and similar vehicles. If weeds are detected, appropriate control measures will be identified in consultation with the Forest Service botanist.
All disturbed ground from construction shall be re-vegetated with native tree/plant species and WRNF-approved seed mix and meet ground cover standards within three years after completion of project construction. All mulch used in re-vegetation efforts shall be certified to be free of weed species.
Wildlife
All construction activities shall be confined to daylight hours, excluding emergencies.
Employees shall not bring dogs to NFS lands during construction.
No food or drink shall be stored in construction vehicles. All windows shall be kept closed and doors locked on all vehicles to prevent bear entry.
All trash containers shall be bear proof and any locations that have food products stored outside of a building shall utilize bear proof food containers.
Scenery Resources
To minimize scenery impact, disturbed areas will be rehabilitated and revegetated within one growing season following the end of the two-year construction period.
To minimize reflectivity, the sheet steel that will be temporarily installed at the point of crossing between NFS lands and the Hercules Lode claim property boundary will be painted <i>Federal Standard 595B Color - Federal Color 34052 - Dark Green</i> .

Note:

The measures outlined in this table represent an updated, final version of PDC. This list supersedes all other versions located in other project-related documentation.

IMPLEMENTATION AND ADMINISTRATIVE APPEAL

On January 17, 2014, the President signed into law the Consolidated Appropriations Act of 2014 (Pub. L. No. 113-76). Section 431 of that Act directs that the 1992 and 2012 legislation establishing the 36 CFR Part 215 (post-decisional appeals) and 36 CFR Part 218 (pre-decisional objections) processes "shall not apply to any project or activity implementing a land and resource management plan ... that is categorically excluded under the National Environmental Policy Act [NEPA]." On February 7, 2014, the President signed into law the Agricultural Act of 2014 (Farm Bill) (Pub. L. No. 113-79). Section 8006 of the 2014 Farm Bill repealed the Appeals Reform Act (ARA) (Pub. L. No. 102-381). The ARA's implementing regulation was 36 CFR Part 215. The 2014 Farm Bill also directs that the pre-decisional objection process established in the Consolidated Appropriation Act of 2012 shall not be applicable to categorically excluded projects or activities.

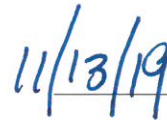
Therefore, this decision is not subject to appeal or objection. Implementation may occur in accordance with PDC.

CONTACT PERSON

For additional information concerning this decision or the Forest Service, contact Michael Braudis, Realty Specialist, White River National Forest, Aspen-Sopris Ranger District, at 620 Main Street, Carbondale, CO 81601 or (970) 404-3153.



Scott Fitzwilliams
Forest Supervisor



Date

REFERENCES

Federal Emergency Management Agency (FEMA). 1987 Flood Insurance Rate Map Panel 08097C0214C. Available online at <https://msc.fema.gov/portal/search?AddressQuery=aspen%20colorado#searchresultsanchor>. Retrieved August 5, 2019.

Metcalf Archaeological Consultants, Inc. 2018. SE Group: Class III Cultural Resources Inventory of the 2018 Proposed Kloser Cabin Location and Road on Richmond Hill Near Aspen Ski Resort in Pitkin County, Colorado. USFS Report NO. R2018021500029. November.

Roaring Fork Engineering, Inc. 2019. Independent Review of Kloser Construction Access – Richmond Ridge Project. August 8.

Western Bionomics Inc. 2019a. Hercules Lode Claim Temporary Construction Access Road Terrestrial & Aquatic Wildlife Biological Evaluation Botany Biological Evaluation Migratory Bird Evaluation. Prepared for USDA Forest Service and SE Group, Inc. May 7.

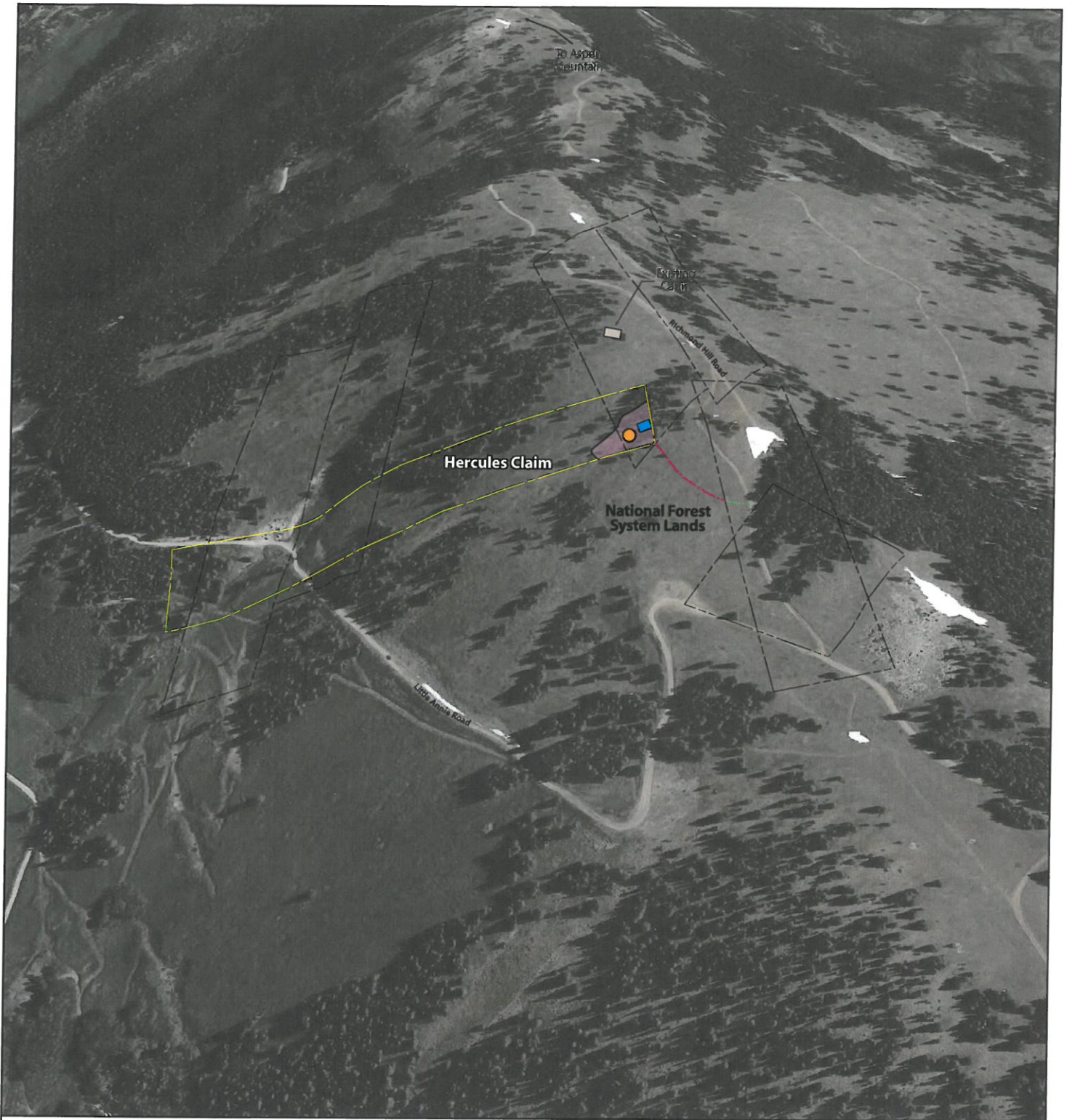
Western Bionomics Inc. 2019b. Hercules Lode Claim Temporary Construction Access Road Wetland and Soil Technical Report. Pitkin County, Colorado. Prepared for USDA Forest Service and SE Group, Inc. May 10.

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White River National Forest
Aspen-Sopris Ranger District

HERCULES ROAD ACCESS PROJECT SELECTED ALTERNATIVE FIGURE

AUGUST 2019

APPROVED

- Access Road (Private Lands)
- Access Road (NFS Lands)
- Cabin Location
- Preliminary Construction Staging Area
- Preliminary Activity Envelope

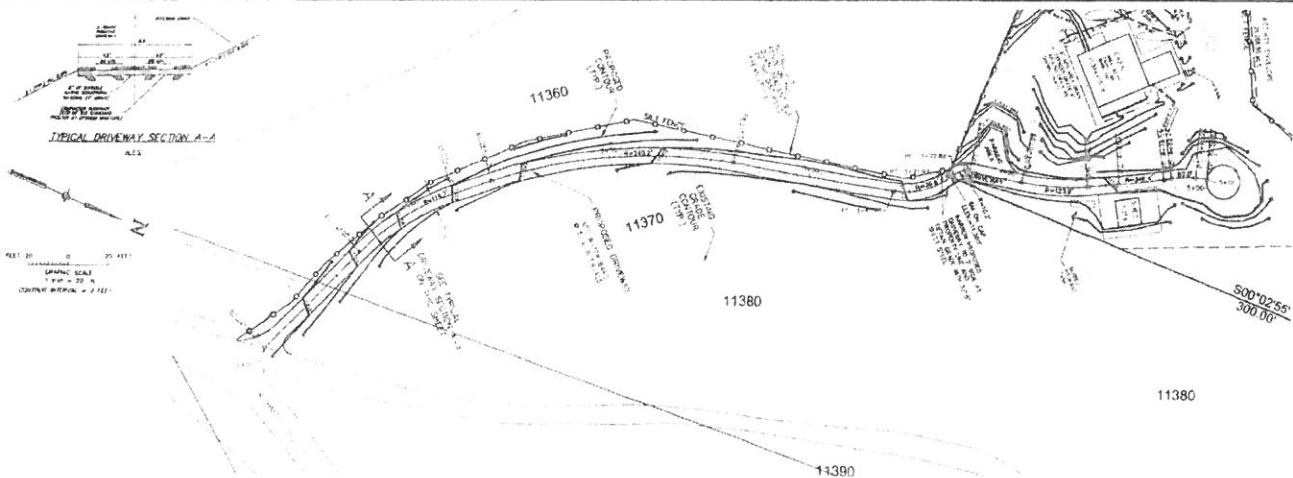
EXISTING

- Hercules Claim Boundary (Private)
- Other Claim Boundary (Private)

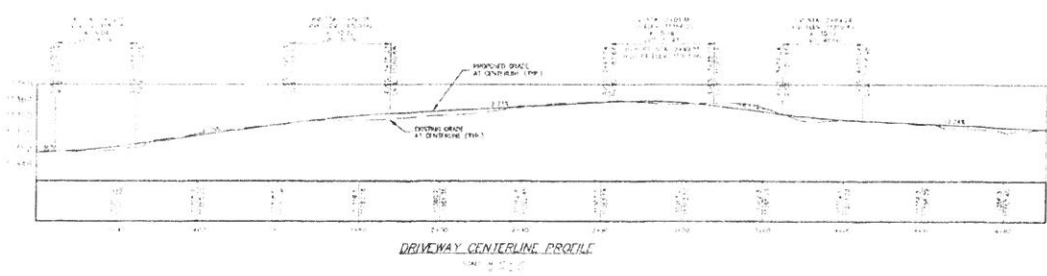


Features depicted on map are approximate

Prepared by: **SE GROUP**



NOTES:
1. SEE GRADING AND DRAINAGE NOTES ON SHEET 2 OF 3.



PROJECT:	CLIENT:	DESIGNER:	DATE:	SHEET NO.:
HEER	WYATT	PINNACLE DESIGN CONSULTING GROUP, INC.	12/17/08	1 OF 3
DESIGNER:	DATE:	PROJECT:	PROJECT NO.:	
HEER	12/17/08	KLOSER CABIN	12-23-07	
		DRIVEWAY PLAN AND PROFILE		

(B-1)